



# Chapter 1: Introduction

Washington’s state-owned aquatic lands are an extremely valuable – but often overlooked – natural resource. For more than 100 years, our state’s aquatic environmental resources have suffered from the direct and indirect effects of human development. Developments large and small — mills, marinas, bulkheads, outfalls, docks, factories, condominiums and more — all alter the aquatic landscape and, too often, degrade the aquatic environment.

The state Legislature has recognized these lands as “an irreplaceable public heritage.” The Department of Natural Resources (the department) is responsible for managing these lands for the benefit of the public, and for protecting and enhancing our state’s legacy of aquatic natural resources for generations to come.

Decisions the department makes today will affect state-owned aquatic lands, and the benefits they provide for the public, for many years. As a proprietary manager rather than a regulator, the department is in a unique position to broadly address all important issues. It also must balance multiple and sometimes conflicting responsibilities. As stewards of aquatic lands, we must ensure that the precious resources in our care are protected for today and forever.

## Intent of this Manual

Often, the reality facing the department is that we are inundated with requests to lease state-owned aquatic lands, and staff must figure out how to respond. When a multitude of requests and decisions are pending and vying for attention, it can be tempting to merely give the quickest answer. It is discouraging that so often it’s difficult to find the time or resources to give the best answer. This manual is intended to be used as a staff guidance document, and is designed to ask and answer at least some of the essential management questions in advance. It is also intended to clearly express the overall goals and directions for state-owned aquatic lands, and to provide succinct guidance to staff regarding many common situations.

Managing aquatic resources usually involves a series of steps resulting in a “use authorization” document. Providing good stewardship of aquatic resources, however, is far more complex than just writing these documents and completing administrative tasks. Decisions about aquatic resources and their use must take place in a larger context, looking at natural ecosystems and socioeconomic systems in their entirety, and considering not only today’s people and issues, but also those of generations to come.

As the title suggests, this manual focuses on how to implement aquatic laws and policies. It offers greater detail and discussion than the laws and policies themselves, and outlines Executive Management’s expectations on how to apply these laws and policies to various situations when managing state-owned aquatic lands. It describes the latitude available within the boundaries of these laws and policies to negotiate and find solutions to problems. It also provides guidance on when and how to involve Executive Management in key projects, proposals and issues.

Managing aquatic resources properly and consistently across the state requires that the laws and policies affecting these resources are clearly understood and uniformly interpreted and

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implemented. This manual is designed to help department staff by outlining the standards that apply to all decisions, on both use authorization applications and other land management efforts. These standards derive directly from (in order of precedence):

1. Washington State Constitution.
2. Washington State statutes (RCWs).
3. Department rules (WACs).
4. Policies approved by the Board of Natural Resources.
5. Direction from the Commissioner of Public Lands.

This manual does not create or change any laws or policies. However, the guidance provided here may interpret existing laws and policies or may change past department practices when previous interpretations and practices have been found ineffective or insufficient for fulfilling the department's responsibilities.

The guidance presents principles and instructions to department staff from Executive Management on how to implement the laws and policies. All of these forms of guidance should be in agreement with each other. In cases of disagreement, however, they rank in the following order:

1. Explicit direction or instructions on a specific issue from Executive Management.
2. *The Aquatic Resources Policy Implementation Manual*.
3. Memoranda of Understanding or Memoranda of Agreement with other agencies approved by the Commissioner or by a Division or Region Manager.
4. Aquascape or other aquatic land use plans approved by the Commissioner or by a Division or Region Manager.

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## How to use this manual

This introductory chapter provides the context for all decisions regarding aquatic resources. In reading this section, staff will understand the vision and guiding principles critical to keep in mind when considering what should or should not occur on state-owned aquatic lands.

The second section describes in greater detail the roles and responsibilities for making aquatic resources decisions.

The third section is set up much like a reference book, and presents and discusses aquatic-related laws and topics. The topics are arranged alphabetically, with the applicable RCWs and WACs presented first, followed by discussion and specific guidance.

While constitutional provisions, laws, rules and policies are the formal standards for managing state-owned aquatic lands, department staff are expected to use their best professional judgement in applying these standards to daily aquatic land management activities. In other words, staff must try to answer “how can we best apply the law to this circumstance?”

It is anticipated that staff will use this document as both a desk manual and a field manual. It was purposely designed to be portable, as well as easily updated. Pages or entire sections can be added, deleted or revised, and supplements on new or evolving topics can be quickly accommodated. Information will be revised or added as policies are refined or developed, or as management direction evolves.

The manual is general in nature. It is not a “cookbook” or a procedural manual describing steps that staff can follow each time to answer every question. Instead, staff must take responsibility for using professional judgement in applying the general principles and guidance found here to individual cases and decisions.

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This manual is only one among numerous sources of authority regarding the management responsibility for state-owned aquatic lands. Detailed procedures, such as directions on how to fill out various forms, are not included here. For procedural requirements on use authorizations, see the *Use Authorization Desk Manual* (sometimes referred to as the Gordon Thomas Honeywell manual), the *Use Authorization Training Manual*, and similar documents. Those manuals offer specific instructions and procedures on completing the appropriate documents. In some cases, procedures will need to be updated to fully express the guidance on various issues as described in this manual.

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## Managing State-Owned Aquatic Lands: An Overview of the Legal History

The department is responsible for managing approximately 2.6 million acres of state-owned aquatic lands. These aquatic lands include tidelands, shorelands of navigable rivers and lakes, beds of marine and fresh waters, lands in harbor areas and waterways, and even some filled aquatic lands which now look like uplands.

At statehood, the authors of the Washington State Constitution debated what to do with aquatic lands. They were greatly concerned about the possibility of a few people or corporations monopolizing harbors, which were essential to the economic health of the young state. They decided that most of this great resource should remain in public hands, as described in three key constitutional provisions.

First, the state asserted ownership of all bedlands, tidelands and shorelands of the state. (Article XVII) The federal government granted these lands to the state under the Equal Footing Doctrine, which required that new states should receive the same benefit. Second, the Constitution allowed the invalidation of earlier grants of aquatic lands made by the Territory of

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Washington to railroad companies and other private parties. (Article XXVII) This was a highly unusual step, in that all other actions and laws of the Territory were continued into statehood.

Finally, the authors provided for a commission to establish harbor areas in navigable waters along the shores of cities. These harbor areas were – and still are – to be reserved “for landings, wharves, streets, and other conveniences of navigation and commerce.” (Article XV) This article also states that harbor areas and the aquatic lands beyond them must never be sold or given away, thereby ensuring that the aquatic lands most necessary for economic activity would be forever controlled by the state for the benefit of the entire public.

The Constitution makes no statement supporting or prohibiting the sale of the state’s tidelands and shorelands; that decision was left to the state Legislature. Between the 1890s and 1950s, the Legislature promoted the sale of these lands to encourage economic development and help fund state government. Most of the state’s tidelands and much of the state’s shorelands were sold into private ownership.

By the late 1950s the trend shifted to leasing aquatic lands rather than selling them. While some leasing had been done prior to statehood, leasing became much more common in order to retain the public land base and to generate a long-term stream of income to the state, rather than the one-time revenue generated from land sales.

In 1971 the Legislature eliminated the sale of tidelands and shorelands except to public entities, and also specified that aquatic lands could not be given away. Today, only 29 percent of the state’s tidelands and 74 percent of the state’s shorelands remain in public ownership. With minor exceptions, all of the state’s bedlands remain in public ownership.

The decision to stop selling state-owned aquatic lands was a major step in the history of managing aquatic resources. It meant that the state would focus on protecting and wisely caring for our state’s legacy of aquatic lands, and helped assure that this

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legacy would exist in some form for future generations. It is now the department's responsibility that the legacy remain as valuable as possible.

Today, the department has the responsibility to be the steward of state-owned aquatic lands. This stewardship demands attention to many more issues and concerns than were necessary or even considered earlier in the state's history. The proposed uses of, and potential threats to, aquatic resources are now more varied and complex. The challenge to protect aquatic resources, and in many cases to restore aquatic resources which were lost or damaged, is greater than ever. Meeting this challenge is also more urgent than ever, if we are to preserve and enhance our state's increasingly rare and valuable legacy of aquatic lands.

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## The Aquatic Lands Act

In 1984, the Legislature ensured protection of the aquatic legacy with the passage of the Aquatic Lands Act. It is the most comprehensive and powerful statement in law on the management of state-owned aquatic lands. These statutes contain four key elements:

- The overall philosophy for the management of state-owned aquatic lands.
- The framework for setting lease rates.
- The framework for ports to assume responsibility for the management of certain state-owned aquatic lands.
- The creation of the Aquatic Lands Enhancement Account (ALEA).

The philosophy established by the Act is much more broad-reaching and protective of aquatic resources than any previous statutes. To assure that the basic nature of our aquatic areas does not change, the Act specifies that aquatic lands should be dedicated to uses that *must* be on the water, rather than activities such as factories or office buildings that could be located elsewhere. Also, the Legislature fostered access to and

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protection of aquatic lands by dedicating revenue from these lands to enhancement projects and improved management efforts.

The Legislature recognized that state-owned aquatic lands are a finite natural resource of great value and an irreplaceable public heritage. The Legislature also recognized that, in addition to economic development of aquatic lands, environmental protection, public use, and renewable resources are critical public benefits.

These public benefits provide the fundamental basis for decisions regarding state-owned aquatic lands. The department is dedicated to taking all possible measures within its authority to protect the aquatic environment. But, even as the department strives to provide for the other benefits of state-owned aquatic lands, environmental protection must be in the forefront of all decisions.

The department acts as a manager who has the authority to lease the land to tenants on behalf of the owners: the current and future citizens of the state. However, the Legislature directed the department to consider the natural values of state-owned aquatic lands as wildlife habitat, natural area preserve, representative ecosystem, or spawning area prior to issuing any initial lease or authorizing any change in use.

Therefore, of all the things the department may wish to consider before granting a use authorization, the only qualities of state-owned aquatic lands the department is actually mandated by statute to consider are these "natural values." After considering these natural values, the department has clear direction to protect them, through either withholding lands from leasing or requiring conditions necessary for their protection within a lease. As part of ensuring environmental protection, the department can and will strongly protect the natural values of state-owned aquatic lands through leasing decisions.

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## The Aquatic Vision

The Aquatic Vision, as approved by the Commissioner of Public Lands, is a non-technical statement of how important aquatic lands are to all Washington citizens. It is a distillation of all the laws, rules and policies that govern state-owned aquatic lands into the essence of why we take on this difficult task: to protect our natural legacy of aquatic resources and pass that legacy down to future generations.

All department staff in the Aquatic Resources program or who contribute to aquatic lands management should periodically take the time to read and reflect on the Aquatic Vision. By incorporating the principles of this vision into all our daily work and each individual decision, we can achieve greater goals for the public benefit.

### Aquatic Vision

Every generation of Washington citizens is responsible for protecting the natural legacy that we inherit. We are the descendants of men and women who protected this legacy for us. And one day we will be the ancestors of Washington citizens who will inherit this legacy from us.

This unbroken chain of human stewardship began in our state long before recorded history, when Indian tribes made their livelihoods from the lands, rivers, and shores of our state. It continued when Washington became a state more than a century ago. Every generation has faced the challenge of finding the balance between satisfying the needs of the present and the needs of the future. As the population of our state has grown, the challenge of finding that balance has become more and more difficult.

Our state's population is growing faster than ever before. Today, there are more than five million of us. But in just 50 years – less than a single lifetime – our numbers will double. How can we preserve our natural heritage under these circumstances?

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First, we must be clear about what we value. Second, we must learn from our history, and from the best of the stewards who came before us. And third, we must constantly focus on keeping the balance between satisfying the needs of the present and the needs of the future.

When Washington became a state in 1889, the federal government gave our state ownership of aquatic lands – the riverbeds, shorelands, tidelands, and estuaries of our state.

Since then, our stewardship over aquatic lands has been fraught with conflict and controversy. In each generation, there have been divisions between those who argued for satisfying the needs of the present, and those who argued for preserving resources for the future. Finding the balance between the two has never been easy.

During Washington's constitutional convention, there was a huge conflict over who had rights to waterfront. In this century, there have been continuing conflicts over who could use aquatic lands, what uses would be allowed, and whether to sell off publicly-owned aquatic lands.

Today, we hope to resolve some of these historic conflicts, and to learn from the best stewards of previous generations. To do this, we need the help of people throughout our state – people who care about our rivers, our shorelands and tidelands, and our estuaries and wetlands.

We want to unite people from every walk of life and from every corner of our state around a vision of what we want to preserve for the future, and how we can satisfy the needs of today without jeopardizing what's really precious to us.

Rapid population growth challenges us to recognize that within just a few years, twice as many people will want to sit on a quiet riverbank, watch birds in a wildlife refuge, and live in homes on the waterfront. Similarly, there may be a doubling of demand for commercial, maritime, and industrial uses of our waterways and harbors.

The one thing that won't increase is the land itself.

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That's why we've drafted the following vision statements and strategies. We want all our work to flow from our recognition that we are just one generation among many, and from a clear vision of what every generation ought to enjoy.

- **Every Washington citizen should know about the legacy of our public aquatic lands, and good stewardship of these resources should be a unifying value for all people of our state.** The preservation of our natural heritage depends on a vigilant and well-informed public. DNR and other natural resource agencies should work with public schools, community and religious organizations, and the media to expand public engagement in the stewardship of our natural heritage.
- **A growing population should be able to enjoy access to rivers, lakes and saltwater.** The people of every generation ought to be able to fish, to sit quietly beside a river, and to marvel at nesting eagles, flocks of migrating birds, and the rhythm of waves lapping on a beach. Public access to aquatic lands must be preserved and enhanced to provide these opportunities to a growing population.
- **Washington's water-dependent, non-polluting maritime economy should flourish.** Appropriately located waterfront enterprises should provide good jobs, non-polluting economic growth that benefits every corner of our state, and innovations that protect – and where necessary, restore – the biological integrity of our natural environment.
- **The biological health and diversity of our aquatic lands — including salmon and other species of fish, shellfish, birds, wildlife and native plants — should be rigorously protected.** Pristine shorelands, wetlands, and natural areas should be set aside to ensure that the basic building blocks of our natural heritage are preserved for all time. And even in those areas where humans and other species mingle, care should be taken to ensure harmony between us.
- **Wherever possible, what has been lost should be restored.** Over the past century or more, lapses in good stewardship have cost our state dearly. Public lands have been sold off, rivers have been polluted, industries have, in some cases, been

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inappropriately located. Wherever possible, the effects of these decisions should be mitigated or reversed to bring back the natural abundance and to restore public access.

- **Aquatic lands should be recognized and managed as part of whole ecosystems.** Past lapses of good stewardship have been caused, at least in part, by lack of understanding of the connections between different parts of our ecosystems. Now we must redouble our efforts to restore the “big picture” thinking that characterizes both the scientific analysis and the most ancient spiritual values of this state's first inhabitants.

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## The Aquatic Resources 10-Year Direction

The Aquatic Resources 10-Year Direction is a list of specific tasks and actions for the Aquatic Resources program – both Division and Region – to undertake to realize the Aquatic Vision and fulfill the department's responsibilities regarding state-owned aquatic lands. This list is the basis for setting the program's budget deliverables and other performance measures each biennium. Through the direction and deliverables, the department can measure whether the Aquatic Resources program is meeting its long-term goals.

The key direction for the Aquatic Resources program is to become a more aggressive trustee for aquatic resources to assure the healthy maintenance of the asset. As part of this direction, the department will:

- Educate the public to increase their appreciation of, and willingness to advocate for, the resources;
- Provide critical resource information for decision makers;
- Set standards for the use of aquatic lands that assure that the department meets statutory goals;
- Develop a plan to restore seriously degraded resources and protect sensitive and critical areas;

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- Begin a program to acquire tidelands for public access and enjoyment; and
  - Assure revenue is available to enhance the resource.

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## Stewardship Principles: Protecting and Restoring Environmental Resources

To properly manage state-owned aquatic lands and resources for the benefit of all the public, the department must take its stewardship role seriously. The decisions about whether to approve a proposed use, what lands to preserve for their environmental values, where to encourage public use and access, or how to clean up and restore polluted and degraded lands, must be made with attention to all the needs and resources of these lands to best provide for the benefits of aquatic lands.

In addition to reviewing lease applications, the department must participate in assessing environmental damage from the past and restoring essential ecosystem functions on aquatic lands. Site-by-site decisions about state-owned aquatic lands, including use authorizations, always must be made in the context of the larger ecosystem. To do otherwise will continue the trend of environmental loss and damage, and will fail to meet the department's obligations.

The following are a few principles of good stewardship. These principles originate from an awareness of the ecological connections between our actions and the health of the natural environment around us. They also apply, however, to decisions involving economic, social and political considerations. These are general principles, which should be applied when appropriate to specific decisions the department makes as steward of aquatic resources:

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- **Apply an ecosystem management approach to decision-making.**  
Aquatic resources must be viewed as part of a larger complex system which includes upland and aquatic environments, plus human systems and impacts within those environments. This means that individual projects and requests must be reviewed in this ecosystem context, rather than as isolated cases.
  - **Ecosystems require integrated and adaptive approaches to management.**  
Ecosystems are comprised of many related resources. Because there is often limited understanding of ecosystem functions, the department must be open to new knowledge about natural resources and their interactions. The department will work with lessees, project proponents, and other interested parties to integrate findings from new science, and to gather and integrate available ecological, technical, social and economic information.
  - **Err on the side of the resources.**  
When activities might impact state-owned aquatic resources, or when information about impacts is incomplete, take the cautious approach. The burden of proof will be on the lessee and project proponent whose activities may potentially damage the resources to show that their actions are harmless or can be fully and appropriately mitigated.
  - **Evaluate all ecological and social costs and benefits.**  
Aquatic lands provide essential habitat and irreplaceable biological and ecological functions. They also provide significant economic benefits, recreational opportunities and other social values. When considering costs and benefits of alternative decisions involving the use of aquatic resources, the department should include all such costs and benefits that can be determined.

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- **Build partnerships.**

Aquatic resources are affected by many forces and many decisions. Department staff must know about and be involved in local issues. The entire department must work with appropriate local, state and federal agencies, tribes, businesses, and community groups. Success depends on our ability and willingness to seek out others to help develop a complete picture and plans for aquatic lands.

- **Significant avoidable adverse impacts to natural resources will not be authorized.**

If damage to aquatic lands or to the environment in general can reasonably be avoided, it must be. When in doubt about the potential environmental consequences of an action, choose caution or choose not to take the action until it is possible to erase the doubt.

- **Ensuring environmental protection requires both no net loss of habitat and, furthermore, a net gain of ecological functions and environmental values on state-owned aquatic lands.**

Rather than merely preventing further degradation, every proposed new approval, renewal or change in an authorized use of state-owned aquatic lands should be considered an opportunity to enhance the aquatic environment. The department's intent is to issue use authorizations which do not degrade aquatic ecological functions, and that actually will enhance them. This way, in the long-term and in the broadest sense, the department will be able to ensure environmental protection on state-owned aquatic lands.